

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:05-CV-00329-TCK-SAJ
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**OBJECTIONS AND RESPONSES OF STATE OF OKLAHOMA TO
SIMMONS FOODS, INC.'S JULY 20, 2007 INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

COMES NOW, the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, (hereinafter "the State") and hereby responds to Simmons Food Inc.'s (hereinafter "Simmons") July 20, 2007 Interrogatories and Requests for Production of Documents to Plaintiffs.

GENERAL OBJECTIONS

1. The State objects to these discovery requests to the extent that they seek the discovery of information that is protected by the attorney-client privilege and/or the work product doctrine.
2. The State objects to these discovery requests to the extent that they seek the discovery of information that is already in the possession of defendant, is obtainable from another source that is more convenient, less burdensome or less expensive, or is as accessible to defendant as it is to the State. As such, the burden of obtaining such sought-after information is substantially the same, or less, for defendant as it is for the State.

3. The State objects to these discovery requests to the extent that they are overly broad, oppressive, unduly burdensome and expensive to answer. Providing answers to such discovery requests would needlessly and improperly burden the State.

4. The State objects to these discovery requests to the extent that they improperly seek identification of “all” items or “each” item of responsive information or to state “with particularity” the basis for each and every contention of the State. Such discovery requests are thus overly broad and unduly burdensome. It may be impossible to locate “all” items or “each” item of responsive information to such discovery requests, or at this stage of the case to state “with particularity” each and every basis for each contention. It is improper by interrogatory to require the State to provide a narrative account of its case.

5. The State objects to the submission of contention interrogatories because such interrogatories are premature. Discovery is ongoing. The State objects to supplying more than the principal and material facts supporting its allegations at this point. Pursuant to Fed.R.Civ.P. 33(c) full responses to all contention interrogatories should be deferred until discovery is completed.

6. The State objects to the extent that discovery sought is unreasonably cumulative or duplicative.

7. The State objects to these discovery requests to the extent that they do not state with the required degree of specificity and particularity what information is being sought. As such, such discovery requests are vague, indefinite, ambiguous and not susceptible to easily discernible meaning.

8. The State objects to these discovery requests to the extent that the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the

amount in controversy, the parties resources, and the importance of the proposed discovery in resolving the issues.

9. The State objects to these discovery requests to the extent that they improperly attempt to impose obligations on the State other than those imposed or authorized by the Federal Rules of Civil Procedure.

10. The State objects to the definitions of these discovery requests to the extent that they improperly attempt to alter the plain meaning of certain words, and expressly the State objects to the definition of "You" as including any municipality, employee, attorney, agent or other representative of the State.

11. By submitting these responses, the State does not acknowledge that the requested information is necessarily relevant or admissible. The State expressly reserves the right to object to further discovery into the subject matter of any information provided and to the introduction of such information into evidence. The State also reserves its right to supplement these responses as appropriate or as required by the Federal Rules of Civil Procedure.

Without waiving the foregoing objections, but hereby incorporating each of them by reference in the specific responses as if fully set forth therein, and subject thereto, the State further states and alleges as follows:

Interrogatories

INTERROGATORY NO. 1: State with particularity the factual and legal basis for the allegation contained in Count 9 of Your Amended Complaint that Simmons is subject to and violated the Oklahoma Administrative Code, 35:17-3-14 and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 1:

At the present time, the State does not allege that Simmons is subject to Oklahoma Administrative Code, 35:17-3-14. The State will supplement this Interrogatory as necessary.

INTERROGATORY NO. 2: State with particularity the factual and legal basis for the allegation contained in ¶ 141 [sic: 142] of Your Amended Complaint that Simmons has “avoided the costs of properly managing and disposing of their poultry waste – not only to their enormous economic benefit and advantage, but also at great cost to the lands and waters compromising the IRW and at the expense of, and in violation of, the State of Oklahoma’s rights” and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO.2:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, as a general matter, subject to ongoing discovery, the Poultry Integrator Defendants have, at a minimum, avoided the cost of transporting excess poultry litter to locations where it (1) can safely be applied and (2) will not contribute to discharge or runoff of pollutants into the Oklahoma portion of the waters of the IRW. In addition the Defendants have avoided the cost of proper handling and storage of poultry waste within the IRW. Because the Poultry Integrator Defendants have avoided these costs, the Oklahoma portions of the land and waters of the IRW have become polluted as alleged by the

State in this case. The State incorporates its objections and response to Interrogatory Nos. 3 and 8 as if fully stated herein.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

INTERROGATORY NO. 3: State with particularity the factual and legal basis for the allegation contained in ¶ 34 of Your Amended Complaint that "[t]he contracts establishing the growing arrangements between [Simmons] and [its] poultry growers are presented to the poultry growers with no opportunity to negotiate their essential terms, and constitute contracts of adhesion" and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO.3:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to the foregoing objections, and to ongoing discovery of the particulars relevant to Simmons, integrated poultry production companies, like Simmons, either raise birds themselves, or under contract arrangements with growers. In those instances in which the integrator contracts with growers, the integrator controls, via its contractual relationship and through representatives who make numerous periodic site visits to its respective poultry growers' operations to ensure compliance with its dictates regarding the care and handling of its birds. Growers have no opportunity to negotiate the essential terms of their contracts, which are contracts of adhesion.

The integrator supplies young birds to its respective growers and picks up the birds from its respective poultry growers when the birds reach the desired level of maturity. The integrator maintains ownership of the birds throughout the process. The integrator formulates and provides feed to the contract growers. By its contracts, grower manuals or other directives, the integrator dictates to the grower the type of buildings, equipment and other facilities to be used in the grower's operation, the feed to be fed to the birds in the grower's care, any feed supplements to be fed to the birds, the medications and vaccinations to be provided to the birds and the environmental conditions under which the birds are raised.

Simmons was a named defendant in *City of Tulsa v. Tyson et.al*, Case No. 4:01-cv-00900 CVE-PJC. The *City of Tulsa* Defendants acknowledged that they deliver baby birds to their contract growers, provide feed and medication for the birds, provide suggestions to improve each contract grower's performance, and pick up the birds prior to processing. *City of Tulsa v. Tyson* summary judgment response brief at ¶ 1, p. 3. Dkt. No. 255, attached hereto as Exhibit 1. The integrator is intimately involved in and controls each stage of the poultry growing process. The level of control by the integrator is such that Simmons so dominates and controls the actions and

activities of its respective poultry growers that the relationship is not one of independent contractor, but rather one of employer and employee or one of principal and agent, and one of owner, operator or arranger of poultry waste under CERCLA.

Because the operations of Simmons in the IRW inevitably create large amounts of waste, and Simmons is legally responsible for the waste created by their birds, Simmons is the owner of the waste, operator of facilities at which or from which waste was disposed, or and/or an arranger of poultry waste by arranging for its disposal by growers or others under CERCLA.

The State further directs Simmons attention to Oklahoma Attorney General Opinion, 2001 OK AG 17. Additionally, the legal basis for this allegation appears in the First Amended Complaint.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

INTERROGATORY NO. 4: State completely and in detail the facts upon which you base the allegation in Your Amended Complaint at ¶ 50 that Simmons “has long known that the application of its poultry waste to lands within the IRW, in the amounts that it is applied and with the frequency that it is applied, far exceeds the capacity of the soils and vegetation to absorb those nutrients present in poultry waste” and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO.4:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying

experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, as a general matter, the Court in *City of Tulsa v. Tyson, et al.* 258 F.Supp. 2d, 1253, 1296 (N.D. Okl. 2003) found that, “[a]lthough Poultry Defendants cite other sources of phosphorus in the Watershed, they admit in their response brief that they were aware in the 1990s that “phosphorus presented potential problems to the Watershed” and, therefore, attempted to address the problem by educating their growers regarding better litter management. Given these admissions, the Court finds Poultry Defendants had “reason to recognize that, in the ordinary course of [the growers] doing the work in the usual or prescribed manner, the trespass or nuisance is likely to result.” Simmons was a defendant in the *City of Tulsa* case. In the response brief in question, the *City of Tulsa* defendants, including Simmons, admitted that they became aware of the environmental impact of phosphorus in poultry waste in “approximately the mid-1990s.” Dkt. No. 255, Case No. 4:01-cv-00900-CVE-PJC, attached hereto as Exhibit 1 at ¶ 4, p. 4. No material difference exists between the polluting results of land application of poultry waste in the Eucha-Spavinaw watershed, which was the subject of the *City of Tulsa* case, and that of the IRW. Particularly as regards to phosphorus and bacteria, it has long been understood in academic and industry circles that land application of wastes can lead and has led to the environmental harms which are the subject of this suit. In addition, the 1999 Comprehensive Basin Management Plan, at p. 14-15, estimated that, while phosphorus loading to Lake Tenkiller was approximately equal from point and non-point sources during base flow, annual loading from non-point sources represented 79% of the total phosphorus load to the lake.

In addition, based on ODAFF inspector soil test results of poultry operations in the summer and fall of 2002 in several counties of Oklahoma in the scenic river watersheds, and an STP threshold of 120 pounds per acre, the Secretary of the Environment has determined that 77% of sites tested exceeded an STP of 120, and 33% of samples exceeded an STP of 300. See SB 972 report, at p. 12-13. Soil nutrient experts at both Oklahoma State University and the University of Arkansas agree that an STP level greater than 65 to 100 is of no value to crops. SB 972 report at p. 3. Phosphorus applied to land in excess of these agronomic needs does not cause the growth of more or better plants, and thus is no longer “fertilizer” in any sense, but is, instead, waste disposal. These findings merely mirror what has long been understood in academic and industry circles about the effect of over application of poultry waste on STP and the agronomic needs of crops and forage.

The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court’s Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

Additionally, the following documents are representative of documents pertaining to the results of over application of poultry wastes:

Managing Phosphorus from Animal Manure, OSU PSS-2249 Fact Sheet found at <http://pods.dasnr.okstate.edu/docushare/dsweb/Get/Document-2641/F-2249web.pdf>

Coordinated Watershed Restoration and Protection Strategy for Oklahoma’s Impaired Scenic Rivers (SB 972 Report), issued in 2003, 2004, 2005, and 2006. Full text of reports are located at <http://www.ose.state.ok.us/documents.html#972->

An Investigation of the Sources and Transport of Nonpoint Source Nutrients in the Illinois River Basin in Oklahoma and Arkansas (Gade 1998) located at <http://storm.okstate.edu/>.

Report: Basin-Wide Pollution Inventory for the Illinois River Comprehensive Basin Management Program – Final Report- Daniel Storm 8/96 OSRC 3-1.

Watershed Restoration Action Strategy (WRAS) for the Illinois River/Barron Fork Watersheds, July 1, 1999,
https://www.deq.state.ok.us/WQDnew/pubs/illinois_river_wras_final.pdf

Grower files provided at the Oklahoma Department of Agriculture Food and Forestry document production and Grower files provided on June 15, 2006, Bates Nos. OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846.

AEMS Database provided on July 2, 2007, from the Oklahoma Department of Agriculture, Food and Forestry.

INTERROGATORY NO. 5: State completely and in detail the facts upon which you base the allegation in Your Amended Complaint at ¶ 53 that Simmons “arranged for its respective growers to take possession of the poultry waste coming from its birds...with full knowledge that the growers were annually placing hundreds of thousands of tons of their poultry waste directly on the ground and that these actions would lead to the run off and release of phosphorus and other hazardous substances, pollutants and contaminants into the lands and waters of the IRW” and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO.5:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, as a general matter, subject to ongoing discovery of the particulars relevant to the Simmons entities, the Poultry Integrator Defendants have for years raised millions of chickens and turkeys, owned by them, in the IRW and have made little or no provision for removal of the waste generated by their birds from the IRW. Poultry waste necessarily follows from the growing of Defendant's poultry. Disposal of the waste has been arranged for by leaving the waste with growers who land apply it. Representatives of the Poultry Integrator Defendants are routinely in and around the land application sites, and the Defendants are well informed that land application is taking place.

In addition, the Court in *City of Tulsa v. Tyson, et al.* 258 F.Supp. 2d, 1253, 1296 (N.D. Okl. 2003) found that, "[a]lthough Poultry Defendants cite other sources of phosphorus in the Watershed, they admit in their response brief that they were aware in the 1990s that "phosphorus presented potential problems to the Watershed" and, therefore, attempted to address the problem by educating their growers regarding better litter management. Given these admissions, the Court finds Poultry Defendants had "reason to recognize that, in the ordinary course of [the growers] doing the work in the usual or prescribed manner, the trespass or nuisance is likely to result." Simmons was a defendant in the *City of Tulsa* case. No material difference exists between the polluting results of land application of poultry waste in the Eucha-Spavinaw watershed, which was the subject of the *City of Tulsa* case, and that of the IRW. Particularly as regards phosphorus and bacteria, it has long been understood in academic and industry circles that land application of wastes can lead and has led to the environmental harms which are the subject of this suit.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory. The State will supplement this Interrogatory

as additional responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

The State has identified certain representative documents as set forth below:

Al-Qinna, M. I. (2003), Measuring and Modeling Soil Water and Solute Transport with Emphasis on Physical Mechanisms in Karst Topography. Ph.D., United States -- Arkansas University of Arkansas 272 p. (see pages 1, 5-8, 39-42, 61-63, 107, 198-200).

Arai, Y., Lanzirrotti, A., Sutton, S., Davis, J. A., and Sparks, D. L. (2003), Arsenic Speciation and Reactivity in Poultry Litter. *Environmental Science and Technology* 37(18): 4083-90. (see pages 4083, 4089).

Avery, L. M., Killham, K., and Jones, D. L. (2005), Survival of E. Coli O157:H7 in Organic Wastes Destined for Land Application. *Journal of Applied Microbiology* 98(4): 814-22. (see pages 814-815, 820-821).

Bellows, B. C. (2005), Arsenic in Poultry Litter: Organic Regulations. A Publication of ATTRA, the National Sustainable Agriculture Information Service 12 p. (see pages 1-8).

Bitton, G. and Gerba, C. P. (1994), *Groundwater Pollution Microbiology*. Krieger Pub. Co. 377 p. (see pages vii, 50-51, 199-203).

Coyne, M. S. and Blevins, R. L. (1995), Fecal Bacteria in Surface Runoff from Poultry-Manured Fields. *Animal Waste and the Land-Water Interface*. Boca Raton, Lewis Publishers: 77-87. (see pages 77, 80, 82, 85-86).

Crane, S R, Westerman, P W, and Overcash, M R. (1980) Dieoff of Fecal Indicator Organisms Following Land Application of Poultry Manure. *Journal of Environmental Quality* 9: 531-537. (see pages 531, 537).

Davis, J. V. and Bell, R.W. (1998), Water-Quality Assessment of the Ozark Plateaus Study Unit, Arkansas, Kansas, Missouri, and Oklahoma; Nutrients, Bacteria, Organic Carbon, and Suspended Sediment in Surface Water, 1993-95. United States Geological Survey 98-4164. 63 p. (see pages 1, 5, 7, 10, 19, 37-38).

Davis, R. K., Brahana, J. V., and Johnston, J. S. (2000), Ground Water in Northwest Arkansas: Minimizing Nutrient Contamination from Non-Point Sources in Karst Terrain. Arkansas Water Resources Center MSC- 288. 69 p. (see pages 1-3, 8, 19-21, 43-44).

Davis, R. K., Hamilton, S., and Van Brahana, J. (2005), Escherichia Coli Survival in Mantled Karst Springs and Streams, Northwest Arkansas Ozarks, U.S.A. *Journal of the American Water Resources Association* 41(6): 1279-1287 (see pages 1279-1280, 1284-1286).

Edwards, D. R. and Daniel, T. C. (1994), A Comparison of Runoff Quality Effects of Organic and Inorganic Fertilizers Applied to Fescuegrass Plots. *Water resources bulletin* 30(1): 35-41. (see pages 35, 40).

Finlay-Moore, O., Hartel, P. G., and Cabrera, M.L. (2000), 17 Beta-Estradiol and Testosterone in Soil and Runoff from Grasslands Amended with Broiler Litter. *Journal of environmental quality* 29(5): 1604-1611. (see pages 1604, 1608-1610).

Garbarino, J. R., Wershaw, R. L., Bednar, A. J., Rutherford, D.W., and Beyer, R. S. (2003), Environmental Fate of Roxarsone in Poultry Litter. I. Degradation of Roxarsone During Composting. *Environmental Science and Technology* 37(8): 1509-1514. (see pages 1515, 1520).

Loehr, R. C. (1978), Hazardous Solid Waste from Agriculture. *Environmental Health Perspectives* 27: 261-273. (see pages 261-262, 265, 267-269).

Mawdsley, J. L., Bardgett, R. D., Merry, R. J., Pain, B. F., and Theodorou, M. K. (1995), Pathogens in Livestock Waste, Their Potential for Movement through Soil and Environmental Pollution. *Applied Soil Ecology: a Section of Agriculture, Ecosystems & Environment* 2(1): 1-15. (see pages 1-12).

Peterson, E. W., Davis, R. K., and Orndorff, H.A. (2000), 17 Beta-Estradiol as an Indicator of Animal Waste Contamination in Mantled Karst Aquifers. *Journal of environmental quality* 29(3): 826-834. (see pages 826-827, 829-833).

Schumacher, J. G. (2003), Survival, Transport, and Sources of Fecal Bacteria in Streams and Survival in Land-Applied Poultry Litter in the Upper Shoal Creek Basin, Southwestern Missouri, 2001-2002. U.S. Geological Survey 03-4243. 45 p. (see pages 1-2, 5, 32-38).

Sobsey, M. D., Khatib, L.A., Hill, V. R., Atocilja, E., and Pillai, S. (2006), Pathogens in Animal Wastes and the Impacts of Waste Management Practices on Their Survival, Transport, and Fate. In *Animal Agriculture and the Environment: National Center for Manure and Animal Waste Management White Papers* (ed. J. M. Rice, D. F. Caldwell, and F. J. Humenik), American Society of Agricultural and Biological Engineers, 609-666 p. (see pages 609-651).

Stolz, J. F., Perera, E., Kilonzo, B., Kail, B., Crable, B., Fisher, E., Ranganathan, M., Wormer, L., and Basu, P. (2007), Biotransformation of 3-Nitro-4-Hydroxybenzene Arsonic Acid

(Roxarsone) and Release of Inorganic Arsenic by Clostridium Species. *Environ. Sci. Technol.* 41(3): 818-823. (see pages 818, 820-822).

Wicks, C., Kelley, C., and Peterson, E. (2004), Estrogen in a Karstic Aquifer. *Ground Water* 42(3): 384-389. (see pages 384, 388).

Oklahoma Water Resources Board, U.S. Army Corps of Engineers and Oklahoma State University. 1996. Diagnostic and Feasibility Study on Tenkiller Lake, Oklahoma. Sponsored by USEPA. Available at <http://www.owrb.ok.gov/studies/reports/reports.php>.

Green, W. R., and B. E. Haggard. 2001. Phosphorus and nitrogen concentrations and loads at Illinois River south of Siloam Springs, Arkansas, 1997–1999. U.S. Geological Survey Water Resources Investigation Report 01–4217.

Report: OCC TASK #78 - FY 1996 319(h) TASK #210 - Output #3 ESTIMATING WATERSHED LEVEL NONPOINT SOURCE LOADING FOR THE STATE OF OKLAHOMA (OSU).

Report: USGS Prepared in Cooperation with the Arkansas Soil and Water Conservation Commission – Phosphorus and Nitrogen Concentrations and Loads at Illinois River South of Siloam Springs, Arkansas, 1997 – 1999 OSRC 2-10.

Report: USGS National Water-Quality Assessment Program – Water-Quality Assessment of the Ozark Plateaus Study Unit, Arkansas, Kansas, Missouri, and Oklahoma – Nutrients, Bacteria, Organic Carbon, and Suspended Sediment in Surface Water, 1993-95 OSRC 2-11.

Report: USGS Preliminary Analysis of Phosphorus Concentrations and Fecal-Indicator Bacteria Counts at Selected Sites in the Illinois River Basin in Oklahoma, 1997-2001 OSRC 2-13.

Report: Basin-Wide Pollution Inventory for the Illinois River Comprehensive Basin Management Program – Final Report- Daniel Storm 8/96 OSRC 3-1.

Report: Recent Total Phosphorus Loads in the Illinois River in Arkansas compared to loads in 1980-1993 – by Martin Maner P.E. ADEQ 2/8/2000 OSRC 7-2B.

Report: An Investigation of the Sources and Transport of Nonpoint Source Nutrients in the Illinois River Basin in Oklahoma and Arkansas (Gade 1998) <http://storm.okstate.edu/>.

Report: Comprehensive Basin Management Plan for the Illinois River Basin in Oklahoma, OCC, May, 1999 available at http://www.okcc.state.ok.us/WQ/WQ_reports/REPORT085.pdf.

Coordinated Watershed Restoration and Protection Strategy for Oklahoma's Impaired Scenic Rivers (SB 972 Report), issued in 2003, 2004, 2005, and 2006. Full text of reports are located at <http://www.ose.state.ok.us/documents.html#972->

Phosphorus Concentrations, Loads and Yields in the Illinois River Basin, Arkansas and Oklahoma, 1997-2001, p. 1, (<http://pubs.usgs.gov/wri/wri034168/>).

Phosphorus Concentrations, Loads and Yields in the Illinois River Basin, Arkansas and Oklahoma, 2000-2004, (<http://pubs.usgs.gov/sir/2006/5175/>).

Watershed Restoration Action Strategy (WRAS) for the Illinois River/Barron Fork Watersheds, July 1, 1999, https://www.deq.state.ok.us/WQDnew/pubs/illinois_river_wras_final.pdf.

Aquarius Database produced from the Oklahoma Department of Environmental Quality on July 2, 2007, which contains sampling data from the IRW by county.

The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

INTERROGATORY NO. 6: State completely an in detail the facts upon which You base the allegation contained in ¶¶ 106, 117, 125 of Your Amended Complaint that Exemplary and punitive damages should ... be awarded" against Simmons and identify every witness upon whom You rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 6:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, as a general matter, subject to ongoing discovery of the particulars relevant to Simmons, ¶¶ 106 and 117, at a minimum, the improper waste disposal practices of the Poultry Integrator Defendants, a nuisance necessarily follows from the manner of raising poultry heretofore employed by the Defendants, and by their improper waste handling and disposal methods. This conduct amounts to reckless and intentional indifference to the rights and interests of the State of Oklahoma. The Poultry Integrator Defendants have reason to recognize that, in the ordinary course of doing the work of growing their poultry in the manner heretofore employed, a nuisance is likely to result. The Poultry Integrator Defendants have been aware of the substantial and unnecessary risk of nuisance to the State and that their improper waste disposal practices will cause injury to the State, and did not care that such injury would result. With knowledge that a nuisance would likely result, the Poultry Integrator Defendants have acted unreasonably in the face of the fact that their conduct would cause serious harm to the State of Oklahoma.

Similarly, with regard to ¶ 125, at a minimum, the improper waste disposal practices of the Poultry Integrator Defendants, a trespass necessarily follows from the manner of raising poultry heretofore employed by the Defendants, and by their improper waste handling and disposal methods. The Poultry Integrator Defendants have reason to recognize that, in the ordinary course of doing the work of growing their poultry in the manner heretofore employed, a trespass is likely to result. The Poultry Integrator Defendants have been aware of the substantial and unnecessary risk of nuisance to the State and that their improper waste disposal practices will cause injury to the State, and did not care that such injury would result. With knowledge that a nuisance would likely result, the Poultry Integrator Defendants have acted unreasonably in the face of the fact that their conduct would cause serious harm to the State of Oklahoma.

The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

INTERROGATORY NO. 7: State with particularity the factual and legal basis for the allegation contained in ¶ 42 of Your Amended Complaint that Simmons "so dominates and controls the actions and activities of its respective poultry growers that the relationship is not one of independent contractor, but rather one of employer and employee or one of principal and agent, and one of owner, operator or arranger of poultry waste under CERCLA" and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 7:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objection, the State incorporates its response and objections to Interrogatory No. 3 as if fully stated herein.

The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained

or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

INTERROGATORY NO. 8: State with particularity the factual and legal basis for the allegation contained in ¶ 17 of Your Amended Complaint that "[Simmons] . . . is responsible for the poultry waste created by [] poultry growing operations, its handling and storage, and its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters, and sediments therein" and identify every witness upon whom You rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 8:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, as a general matter, subject to ongoing discovery of the particulars relevant to the Simmons entities, please see the Response to Interrogatory No. 3 regarding the responsibility of the Simmons entities for the waste created by their birds in the IRW. Additionally, because poultry waste "necessarily follows" from the "growing" of poultry, the Simmons entities are responsible for the nuisance and trespass created by waste generated by their birds. Restatement Second of Torts, § 427B. Simmons entities are

responsible for the nuisance and trespass created by Land applying poultry waste at times and places in a manner which causes large quantities of soluble and particulate phosphorus, as well as bacteria, and other pollutants to be released from application sites which can travel by surface runoff within the IRW during and after rainfall. Litter is commonly piled in the open air without proper cover or flooring by Poultry Integrator Defendants or their growers in the IRW. The Defendants, including Simmons, have sufficient ongoing presence in the IRW to observe and know of this improper storage. Further, excessive application of poultry waste causes phosphorus and other pollutants to build up in the soil to such an extent that, even without any additional application of poultry waste to the land, the excess residual phosphorus and other pollutants will continue to run off and be released into the waters of the IRW in the future. Phosphorus transported to the waters and sediments of the IRW causes excessive algal growth, algal blooms, hypolimnetic anoxia and other adverse impacts in the waters of the IRW, resulting in eutrophication, a degradation in water quality and sediments, injury to biota and impaired uses. Bacteria from poultry waste creates a risk to human health when washed into the waters of the IRW from land application sites. Other pollutants from poultry waste may also harm biota within the IRW.

Additionally, the legal basis for this allegation appears in the First Amended Complaint.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

The State will supplement this Interrogatory as additional responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its

experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response. However, the State has identified certain representative documents as set forth below which are pertinent to the subject of this interrogatory:

Al-Qinna, M. I. (2003), Measuring and Modeling Soil Water and Solute Transport with Emphasis on Physical Mechanisms in Karst Topography. Ph.D., United States -- Arkansas University of Arkansas 272 p. (see pages 1, 5-8, 39-42, 61-63, 107, 198-200).

Arai, Y., Lanzirotti, A., Sutton, S., Davis, J. A., and Sparks, D. L. (2003), Arsenic Speciation and Reactivity in Poultry Litter. *Environmental Science and Technology* 37(18): 4083-90. (see pages 4083, 4089).

Avery, L. M., Killham, K., and Jones, D. L. (2005), Survival of E. Coli O157:H7 in Organic Wastes Destined for Land Application. *Journal of Applied Microbiology* 98(4): 814-22. (see pages 814-815, 820-821).

Bellows, B. C. (2005), Arsenic in Poultry Litter: Organic Regulations. A Publication of ATTRA, the National Sustainable Agriculture Information Service 12 p. (see pages 1-8).

Bitton, G. and Gerba, C. P. (1994), *Groundwater Pollution Microbiology*. Krieger Pub. Co. 377 p. (see pages vii, 50-51, 199-203).

Coyne, M. S. and Blevins, R. L. (1995), Fecal Bacteria in Surface Runoff from Poultry-Manured Fields. *Animal Waste and the Land-Water Interface*. Boca Raton, Lewis Publishers: 77-87. (see pages 77, 80, 82, 85-86).

Crane, S R, Westerman, P W, and Overcash, M R. (1980) Dieoff of Fecal Indicator Organisms Following Land Application of Poultry Manure. *Journal of Environmental Quality* 9: 531-537. (see pages 531, 537).

Davis, J. V. and Bell, R.W. (1998), Water-Quality Assessment of the Ozark Plateaus Study Unit, Arkansas, Kansas, Missouri, and Oklahoma; Nutrients, Bacteria, Organic Carbon, and Suspended Sediment in Surface Water, 1993-95. United States Geological Survey 98-4164. 63 p. (see pages 1, 5, 7, 10, 19, 37-38).

Davis, R. K., Brahana, J. V., and Johnston, J. S. (2000), Ground Water in Northwest Arkansas: Minimizing Nutrient Contamination from Non-Point Sources in Karst Terrain. Arkansas Water Resources Center MSC- 288. 69 p. (see pages 1-3, 8, 19-21, 43-44).

Davis, R. K., Hamilton, S., and Van Brahana, J. (2005), Escherichia Coli Survival in Mantled Karst Springs and Streams, Northwest Arkansas Ozarks, U.S.A. *Journal of the American Water Resources Association* 41(6): 1279-1287 (see pages 1279-1280, 1284-1286).

Edwards, D. R. and Daniel, T. C. (1994), A Comparison of Runoff Quality Effects of Organic and Inorganic Fertilizers Applied to Fescuegrass Plots. *Water resources bulletin* 30(1): 35-41. (see pages 35, 40).

Finlay-Moore, O., Hartel, P. G., and Cabrera, M.L. (2000), 17 Beta-Estradiol and Testosterone in Soil and Runoff from Grasslands Amended with Broiler Litter. *Journal of environmental quality* 29(5): 1604-1611. (see pages 1604, 1608-1610).

Garbarino, J. R., Wershaw, R. L., Bednar, A. J., Rutherford, D.W., and Beyer, R. S. (2003), Environmental Fate of Roxarsone in Poultry Litter. I. Degradation of Roxarsone During Composting. *Environmental Science and Technology* 37(8): 1509-1514. (see pages 1515, 1520).

Loehr, R. C. (1978), Hazardous Solid Waste from Agriculture. *Environmental Health Perspectives* 27: 261-273. (see pages 261-262, 265, 267-269).

Mawdsley, J. L., Bardgett, R. D., Merry, R. J., Pain, B. F., and Theodorou, M. K. (1995), Pathogens in Livestock Waste, Their Potential for Movement through Soil and Environmental Pollution. *Applied Soil Ecology : a Section of Agriculture, Ecosystems & Environment* 2(1): 1-15. (see pages 1-12).

Peterson, E. W., Davis, R. K., and Orndorff, H.A. (2000), 17 Beta-Estradiol as an Indicator of Animal Waste Contamination in Mantled Karst Aquifers. *Journal of environmental quality* 29(3): 826-834. (see pages 826-827, 829-833).

Schumacher, J. G. (2003), Survival, Transport, and Sources of Fecal Bacteria in Streams and Survival in Land-Applied Poultry Litter in the Upper Shoal Creek Basin, Southwestern Missouri, 2001-2002. U.S. Geological Survey 03-4243. 45 p. (see pages 1-2, 5, 32-38).

Sobsey, M. D., Khatib, L.A., Hill, V. R., Atocilja, E., and Pillai, S. (2006), Pathogens in Animal Wastes and the Impacts of Waste Management Practices on Their Survival, Transport, and Fate. In *Animal Agriculture and the Environment: National Center for Manure and Animal Waste Management White Papers* (ed. J. M. Rice, D. F. Caldwell, and F. J. Humenik), American Society of Agricultural and Biological Engineers, 609-666 p. (see pages 609-651).

Stolz, J. F., Perera, E., Kilonzo, B., Kail, B., Crable, B., Fisher, E., Ranganathan, M., Wormer, L., and Basu, P. (2007), Biotransformation of 3-Nitro-4-Hydroxybenzene Arsonic Acid (Roxarsone) and Release of Inorganic Arsenic by Clostridium Species. *Environ. Sci. Technol.* 41(3): 818-823. (see pages 818, 820-822).

Wicks, C., Kelley, C., and Peterson, E. (2004), Estrogen in a Karstic Aquifer. *Ground Water* 42(3): 384-389. (see pages 384, 388).

Oklahoma Water Resources Board, U.S. Army Corps of Engineers and Oklahoma State University. 1996. Diagnostic and Feasibility Study on Tenkiller Lake, Oklahoma. Sponsored by USEPA. Available at <http://www.owrb.ok.gov/studies/reports/reports.php>.

Green, W. R., and B. E. Haggard. 2001. Phosphorus and nitrogen concentrations and loads at Illinois River south of Siloam Springs, Arkansas, 1997–1999. U.S. Geological Survey Water Resources Investigation Report 01–4217.

Report: OCC TASK #78 - FY 1996 319(h) TASK #210 - Output #3 ESTIMATING WATERSHED LEVEL NONPOINT SOURCE LOADING FOR THE STATE OF OKLAHOMA (OSU).

Report: USGS Prepared in Cooperation with the Arkansas Soil and Water Conservation Commission – Phosphorus and Nitrogen Concentrations and Loads at Illinois River South of Siloam Springs, Arkansas, 1997 – 1999 OSRC 2-10.

Report: USGS National Water-Quality Assessment Program – Water-Quality Assessment of the Ozark Plateaus Study Unit, Arkansas, Kansas, Missouri, and Oklahoma – Nutrients, Bacteria, Organic Carbon, and Suspended Sediment in Surface Water, 1993-95 OSRC 2-11.

Report: USGS Preliminary Analysis of Phosphorus Concentrations and Fecal-Indicator Bacteria Counts at Selected Sites in the Illinois River Basin in Oklahoma, 1997-2001 OSRC 2-13.

Report: Basin-Wide Pollution Inventory for the Illinois River Comprehensive Basin Management Program – Final Report- Daniel Storm 8/96 OSRC 3-1.

Report: Recent Total Phosphorus Loads in the Illinois River in Arkansas compared to loads in 1980-1993 – by Martin Maner P.E. ADEQ 2/8/2000 OSRC 7-2B.

Report: An Investigation of the Sources and Transport of Nonpoint Source Nutrients in the Illinois River Basin in Oklahoma and Arkansas (Gade 1998) <http://storm.okstate.edu/>.

Report: Comprehensive Basin Management Plan for the Illinois River Basin in Oklahoma, OCC, May, 1999 available at http://www.okcc.state.ok.us/WQ/WQ_reports/REPORT085.pdf.

Coordinated Watershed Restoration and Protection Strategy for Oklahoma's Impaired Scenic Rivers (SB 972 Report), issued in 2003, 2004, 2005, and 2006. Full text of reports are located at <http://www.ose.state.ok.us/documents.html#972->

Phosphorus Concentrations, Loads and Yields in the Illinois River Basin, Arkansas and Oklahoma, 1997-2001, p. 1, (<http://pubs.usgs.gov/wri/wri034168/>).

Phosphorus Concentrations, Loads and Yields in the Illinois River Basin, Arkansas and Oklahoma, 2000-2004, (<http://pubs.usgs.gov/sir/2006/5175/>).

Watershed Restoration Action Strategy (WRAS) for the Illinois River/Barron Fork Watersheds, July 1, 1999,
https://www.deq.state.ok.us/WQDnew/pubs/illinois_river_wras_final.pdf

Aquarius Database produced from the Oklahoma Department of Environmental Quality on July 2, 2007, which contains sampling data from the IRW by county.

BACTI Database produced from the Oklahoma Department of Environmental Quality on July 2, 2007, which contains bacteria data from the IRW by county.

INTERROGATORY NO. 9: State with particularity the factual and legal basis for the allegation contained in ¶ 30 of Your Amended Complaint that “[Simmons] by virtue of [its] improper poultry waste disposal practices, [is] responsible for this pollution of, as well as the degradation of, impairment of and injury to the IRW, including the biota, lands, waters, and sediments therein” and identify every witness upon whom You rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 9:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiver of any of the foregoing objections, the State incorporates its objections and responses to Interrogatories 3 and 8 as if fully stated herein.

The State will supplement this Interrogatory as additional responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court’s Scheduling Order (Dkt. #1075). The State and its

experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

INTERROGATORY NO. 10: State with particularity the factual and legal basis for the allegation contained in ¶ 43 of Your Amended Complaint that Simmons “[knew] and [] had any reason to know that in the ordinary course of the poultry growers raising birds in the usual and prescribed manner poultry waste will be handled and disposed of in such a manner to cause injury to the IRW, including the biota, lands, waters and sediments therein...” and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 10:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, as a general matter, subject to ongoing discovery of the particulars relevant to the Simmons entities, the Court in *City of Tulsa v. Tyson, et al.* 258 F.Supp. 2d, 1253, 1296 (N.D. Okl. 2003) found that, “[a]lthough Poultry Defendants cite other sources of phosphorus in the Watershed, they admit in their response brief that they were aware in the 1990s that “phosphorus presented potential problems to the Watershed” and, therefore, attempted to address the problem by educating their growers regarding better litter management. Given these admissions, the Court finds Poultry Defendants had “reason to recognize that, in the ordinary course of [the growers] doing the work in the usual

or prescribed manner, the trespass or nuisance is likely to result.” Simmons was a defendant in the *City of Tulsa* case. In the response brief in question, the *City of Tulsa* defendants, including Simmons, admitted that they became aware of the environmental impact of phosphorous in poultry waste in “approximately the mid-1990s.” Dkt. No. 255, Case No. 4:01-cv-00900-CVE-PJC, attached hereto as Exhibit 1 at ¶ 4, p. 4. No material difference exists between the polluting results of land application of poultry waste in the Eucha-Spavinaw watershed, which was the subject of the *City of Tulsa* case, and that of the IRW. Particularly as regards phosphorus and bacteria, it has long been understood in academic and industry circles that land application of wastes can lead to the environmental harms which are the subject of this suit. Additionally, the legal basis for this allegation appears in the First Amended Complaint.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

The State will supplement this Interrogatory as additional responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court’s Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

The State has identified certain representative documents as set forth below:

Al-Qinna, M. I. (2003), Measuring and Modeling Soil Water and Solute Transport with Emphasis on Physical Mechanisms in Karst Topography. Ph.D., United States -- Arkansas University of Arkansas 272 p. (see pages 1, 5-8, 39-42, 61-63, 107, 198-200).

Arai, Y., Lanzarotti, A., Sutton, S., Davis, J. A., and Sparks, D. L. (2003), Arsenic Speciation and Reactivity in Poultry Litter. *Environmental Science and Technology* 37(18): 4083-90. (see pages 4083, 4089).

Avery, L. M., Killham, K., and Jones, D. L. (2005), Survival of E. Coli O157:H7 in Organic Wastes Destined for Land Application. *Journal of Applied Microbiology* 98(4): 814-22. (see pages 814-815, 820-821).

Bellows, B. C. (2005), Arsenic in Poultry Litter: Organic Regulations. A Publication of ATTRA, the National Sustainable Agriculture Information Service 12 p. (see pages 1-8).

Bitton, G. and Gerba, C. P. (1994), *Groundwater Pollution Microbiology*. Krieger Pub. Co. 377 p. (see pages vii, 50-51, 199-203).

Coyne, M. S. and Blevins, R. L. (1995), Fecal Bacteria in Surface Runoff from Poultry-Manured Fields. *Animal Waste and the Land-Water Interface*. Boca Raton, Lewis Publishers: 77-87. (see pages 77, 80, 82, 85-86).

Crane, S R, Westerman, P W, and Overcash, M R. (1980) Dieoff of Fecal Indicator Organisms Following Land Application of Poultry Manure. *Journal of Environmental Quality* 9: 531-537. (see pages 531, 537).

Davis, J. V. and Bell, R.W. (1998), Water-Quality Assessment of the Ozark Plateaus Study Unit, Arkansas, Kansas, Missouri, and Oklahoma; Nutrients, Bacteria, Organic Carbon, and Suspended Sediment in Surface Water, 1993-95. United States Geological Survey 98-4164. 63 p. (see pages 1, 5, 7, 10, 19, 37-38).

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Davis, R. K., Hamilton, S., and Van Brahana, J. (2005), Escherichia Coli Survival in Mantled Karst Springs and Streams, Northwest Arkansas Ozarks, U.S.A. *Journal of the American Water Resources Association* 41(6): 1279-1287 (see pages 1279-1280, 1284-1286).

Edwards, D. R. and Daniel, T. C. (1994), A Comparison of Runoff Quality Effects of Organic and Inorganic Fertilizers Applied to Fescuegrass Plots. *Water resources bulletin* 30(1): 35-41. (see pages 35, 40).

Finlay-Moore, O., Hartel, P. G., and Cabrera, M.L. (2000), 17 Beta-Estradiol and Testosterone in Soil and Runoff from Grasslands Amended with Broiler Litter. *Journal of environmental quality* 29(5): 1604-1611. (see pages 1604, 1608-1610).

Garbarino, J. R., Wershaw, R. L., Bednar, A. J., Rutherford, D.W., and Beyer, R. S. (2003), Environmental Fate of Roxarsone in Poultry Litter. I. Degradation of Roxarsone During Composting. *Environmental Science and Technology* 37(8): 1509-1514. (see pages 1515, 1520).

Loehr, R. C. (1978), Hazardous Solid Waste from Agriculture. *Environmental Health Perspectives* 27: 261-273. (see pages 261-262, 265, 267-269).

Mawdsley, J. L., Bardgett, R. D., Merry, R. J., Pain, B. F., and Theodorou, M. K. (1995), Pathogens in Livestock Waste, Their Potential for Movement through Soil and Environmental Pollution. *Applied Soil Ecology: a Section of Agriculture, Ecosystems & Environment* 2(1): 1-15. (see pages 1-12).

Peterson, E. W., Davis, R. K., and Orndorff, H.A. (2000), 17 Beta-Estradiol as an Indicator of Animal Waste Contamination in Mantled Karst Aquifers. *Journal of environmental quality* 29(3): 826-834. (see pages 826-827, 829-833).

Schumacher, J. G. (2003), Survival, Transport, and Sources of Fecal Bacteria in Streams and Survival in Land-Applied Poultry Litter in the Upper Shoal Creek Basin, Southwestern Missouri, 2001-2002. U.S. Geological Survey 03-4243. 45 p. (see pages 1-2, 5, 32-38).

Sobsey, M. D., Khatib, L.A., Hill, V. R., Atocilja, E., and Pillai, S. (2006), Pathogens in Animal Wastes and the Impacts of Waste Management Practices on Their Survival, Transport, and Fate. In *Animal Agriculture and the Environment: National Center for Manure and Animal Waste Management White Papers* (ed. J. M. Rice, D. F. Caldwell, and F. J. Humenik), American Society of Agricultural and Biological Engineers, 609-666 p. (see pages 609-651).

Stolz, J. F., Perera, E., Kilonzo, B., Kail, B., Crable, B., Fisher, E., Ranganathan, M., Wormer, L., and Basu, P. (2007), Biotransformation of 3-Nitro-4-Hydroxybenzene Arsonic Acid (Roxarsone) and Release of Inorganic Arsenic by Clostridium Species. *Environ. Sci. Technol.* 41(3): 818-823. (see pages 818, 820-822).

Wicks, C., Kelley, C., and Peterson, E. (2004), Estrogen in a Karstic Aquifer. *Ground Water* 42(3): 384-389. (see pages 384, 388).

Oklahoma Water Resources Board, U.S. Army Corps of Engineers and Oklahoma State University. 1996. Diagnostic and Feasibility Study on Tenkiller Lake, Oklahoma. Sponsored by USEPA. Available at <http://www.owrb.ok.gov/studies/reports/reports.php>.

Green, W. R., and B. E. Haggard. 2001. Phosphorus and nitrogen concentrations and loads at Illinois River south of Siloam Springs, Arkansas, 1997–1999. U.S. Geological Survey Water Resources Investigation Report 01–4217.

Report: OCC TASK #78 - FY 1996 319(h) TASK #210 - Output #3 ESTIMATING WATERSHED LEVEL NONPOINT SOURCE LOADING FOR THE STATE OF OKLAHOMA (OSU).

Report: USGS Prepared in Cooperation with the Arkansas Soil and Water Conservation Commission – Phosphorus and Nitrogen Concentrations and Loads at Illinois River South of Siloam Springs, Arkansas, 1997 – 1999 OSRC 2-10.

Report: USGS National Water-Quality Assessment Program – Water-Quality Assessment of the Ozark Plateaus Study Unit, Arkansas, Kansas, Missouri, and Oklahoma – Nutrients, Bacteria, Organic Carbon, and Suspended Sediment in Surface Water, 1993-95 OSRC 2-11.

Report: USGS Preliminary Analysis of Phosphorus Concentrations and Fecal-Indicator Bacteria Counts at Selected Sites in the Illinois River Basin in Oklahoma, 1997-2001 OSRC 2-13.

Report: Basin-Wide Pollution Inventory for the Illinois River Comprehensive Basin Management Program – Final Report- Daniel Storm 8/96 OSRC 3-1.

Report: Recent Total Phosphorus Loads in the Illinois River in Arkansas compared to loads in 1980-1993 – by Martin Maner P.E. ADEQ 2/8/2000 OSRC 7-2B.

Report: An Investigation of the Sources and Transport of Nonpoint Source Nutrients in the Illinois River Basin in Oklahoma and Arkansas (Gade 1998) <http://storm.okstate.edu/>.

Report: Comprehensive Basin Management Plan for the Illinois River Basin in Oklahoma, OCC, May, 1999 available at http://www.okcc.state.ok.us/WQ/WQ_reports/REPORT085.pdf.

Coordinated Watershed Restoration and Protection Strategy for Oklahoma’s Impaired Scenic Rivers (SB 972 Report), issued in 2003, 2004, 2005, and 2006. Full text of reports are located at <http://www.ose.state.ok.us/documents.html#972->

Phosphorus Concentrations, Loads and Yields in the Illinois River Basin, Arkansas and Oklahoma, 1997-2001, p. 1, (<http://pubs.usgs.gov/wri/wri034168/>).

Phosphorus Concentrations, Loads and Yields in the Illinois River Basin, Arkansas and Oklahoma, 2000-2004, (<http://pubs.usgs.gov/sir/2006/5175/>).

Watershed Restoration Action Strategy (WRAS) for the Illinois River/Barron Fork Watersheds, July 1, 1999, https://www.deq.state.ok.us/WQDnew/pubs/illinois_river_wras_final.pdf

Aquarius Database produced from the Oklahoma Department of Environmental Quality on July 2, 2007, which contains sampling data from the IRW by county.

BACTI Database produced from the Oklahoma Department of Environmental Quality on July 2, 2007, which contains bacteria data from the IRW by county.

INTERROGATORY NO. 11: State completely and in detail the facts upon which you base the allegation in Your Amended Complaint at ¶ 47 that Simmons “has long known that it has been and continues to be the practice to routinely and repeatedly improperly store the poultry

waste generated in the course of its respective growing operations on lands within the IRW” and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 11:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiver of the foregoing objections, the State hereby incorporates its objections and responses to Interrogatories 3, 8, and 10 as if fully stated herein.

Because discovery is ongoing, the State does not presently know which witnesses it will use to support its claims referenced in this interrogatory. The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court’s Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

INTERROGATORY NO. 12: State completely and in detail the facts upon which you base the allegations in Your Amended Complaint at ¶ 49 that Simmons “has long known that the application of poultry waste to lands within the IRW, in the amounts that it is applied, is in excess of any agronomics need and is not consistent with good agricultural practices and, as

such, constitutes waste disposal rather than any normal or appropriate application of fertilizer” and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 12:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, as a general matter, subject to ongoing discovery of the particulars relevant to the Simmons entities, see Response to Interrogatory No. 4. In addition, based on ODAFF inspector soil test results of poultry operations in the summer and fall of 2002 in several counties of Oklahoma in the scenic river watersheds, and an STP threshold of 120 pounds per acre, the Secretary of the Environment has determined that 77% of sites tested exceeded an STP of 120, and 33% of samples exceeded an STP of 300. See SB 972 report, at p. 12-13. Soil nutrient experts at both Oklahoma State University and the University of Arkansas agree that an STP level greater than 65 to 100 is of no value to crops. SB 972 report at p. 3. Phosphorus applied to land in excess of these agronomic needs does not cause the growth of more or better plants, and thus is no longer “fertilizer” in any sense, but is, instead, waste disposal. These findings merely mirror what has long been understood in academic and industry circles about the effect of over application of poultry waste on STP and the agronomic needs of crops and forage. Because discovery is ongoing, the State

has not determined which witnesses it will use to support its claims referenced in this interrogatory.

The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response. The following documents are representative of documents responsive to this request:

Managing Phosphorus from Animal Manure, OSU PSS-2249 Fact Sheet found at <http://pods.dasnr.okstate.edu/docushare/dsweb/Get/Document-2641/F-2249web.pdf>

Coordinated Watershed Restoration and Protection Strategy for Oklahoma's Impaired Scenic Rivers (SB 972 Report), issued in 2003, 2004, 2005, and 2006. Full text of reports are located at <http://www.ose.state.ok.us/documents.html#972->

An Investigation of the Sources and Transport of Nonpoint Source Nutrients in the Illinois River Basin in Oklahoma and Arkansas (Gade 1998) located at <http://storm.okstate.edu/>.

Report: Basin-Wide Pollution Inventory for the Illinois River Comprehensive Basin Management Program – Final Report- Daniel Storm 8/96 OSRC 3-1.

Watershed Restoration Action Strategy (WRAS) for the Illinois River/Barron Fork Watersheds, July 1, 1999, https://www.deq.state.ok.us/WQDnew/pubs/illinois_river_wras_final.pdf

Grower files provided at the Oklahoma Department of Agriculture Food and Forestry document production and Grower files provided on June 15, 2006, Bates Nos. OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846 and at subsequent document productions.

AEMS Database provided on July 2, 2007, from the Oklahoma Department of Agriculture, Food and Forestry.

INTERROGATORY NO. 13: State completely and in detail the facts upon which you base the allegation in Your Amended Complaint at ¶ 51 that Simmons “has long known that

these poultry waste disposal practices lead to the run-off and release of large quantities of phosphorus and other hazardous substances, pollutants and contaminants in the poultry waste onto and from the fields and into the waters of the IRW” and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 13:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, the State incorporates its objections and responses to Interrogatory No. 10 as if fully stated herein.

Because discovery is ongoing, the State does has not determined which witnesses it will use to support its claims referenced in this interrogatory. The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court’s Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

INTERROGATORY NO. 14: State completely and in detail the facts upon which you base the allegation in Your Amended Complaint at ¶ 57 that Simmons “has long known that

poultry waste contains a number of constituents that can and do cause harm to the environment and pose human health hazards” and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 14:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, the State incorporates its objections and responses to Interrogatory No. 10 as if fully stated herein.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory. The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court’s Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

INTERROGATORY NO. 15: State with particularity the factual and legal basis for the allegation in ¶ 55 of Your Amended Complaint that Simmons “poultry waste disposal practices

are not, and have not been, undertaken in conformity with federal and state laws and regulations” and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 15:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

The actions of Simmons and entities for which they are legally responsible violate CERCLA, the Solid Waste Disposal Act (SWDA), and the following provisions of the Oklahoma Registered Poultry Feeding Operations Act and its implementing regulations: 2 O.S. §§ 10-9.1 and 10-9.7; and OAC 35:17-5-1 and 35:17-5-5. Simmons and entities for which they are legally responsible violate the following provision of the Oklahoma Agricultural Code: 2 O.S. § 2-18.1. Further, Simmons and entities for which they are legally responsible violate the following provision of the Oklahoma Environmental Quality Act: 27A O.S. § 2-6-105, as well as State and Federal common law. In addition, the actions of Simmons and entities for which they are legally responsible violate the following provisions of the OAC: 785:45-1-2, 785:45-3-2, 785:45-1-1, 785:45-5-10, 785:45-5-19, 785:45-5-12, 785:45-7-1, 785:45-7-2, 785:45-7-3, 785:45-5-9, 785:45-5-16, and 785:45-5-25.

The State intends to demonstrate violations of these statutes and regulations through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data

collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of the Defendant's wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

- (A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the "pathway" to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;
- (B) Showing that a chemical "finger print" is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants' waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;
- (C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;

- (D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;
- (E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;
- (F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;
- (G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;
- (H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. The State has produced documents addressed by the Court's January 5, 2007 Order associated with the State's sampling scheme with the February 1, 3, and 8, 2007 document productions and will continue these productions on a rolling basis. The expert opinions and reports that will show these violations are still being completed and will be provided to the Defendants in accordance with the Court's Scheduling Order (Dkt. #1075).

The State has not yet determined which witness or witnesses it will use to prove these facts. To the extent that the State will prove that Simmons has violated these statutes and

regulations through other direct evidence, it will supplement its response to disclose that other direct evidence.

INTERROGATORY NO. 16: State with particularity the factual and legal basis for the allegation contained in Counts 1 and 2 of Your Amended Complaint that Simmons violated CERCLA and identify every witness upon whom you will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 16:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State objects because this interrogatory is unduly burdensome and is a contention interrogatory that asks the State essentially to state the factual and legal basis for two entire counts of its lawsuit. Additionally, the legal basis for this allegation appears in the First Amended Complaint.

Subject to and without waiving the foregoing objections, the State incorporates its objections and responses to Interrogatory Nos. 3, 8 and 9 as if fully stated herein. Furthermore, the State restates and incorporates its allegations in the States First Amended Complaint Counts 1 and 2.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory. The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt.

#1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports and the State reserves the rights to supplement its response.

INTERROGATORY NO. 17: State with particularity the factual and legal basis for the allegation contained in Count 3 of Your Amended Complaint that Simmons violated the Solid Waste Disposal Act and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 17:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State objects because this interrogatory is unduly burdensome and is a contention interrogatory that asks the State to essentially state the factual and legal basis for an entire count of its lawsuit. Additionally, the legal basis for this allegation appears in the First Amended Complaint.

Subject to and without waiving the foregoing objections, the State intends to demonstrate the conduct of Simmons violated the Solid Waste Disposal Act through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of Simmons wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they

together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

- (A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the “pathway” to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;
- (B) Showing that a chemical “finger print” is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants’ waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;
- (C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;
- (D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;
- (E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. The State has produced documents addressed by the Court's January 5, 2007 Order associated with the State's sampling scheme and will continue these productions on a rolling basis. The expert opinions and reports that will show these violations are still being completed and will be provided to the Defendants in accordance with the Court's Scheduling Order (Dkt. #1075).

The State has not yet determined which witness or witnesses it will use to prove these facts. To the extent that the State will prove that Simmons has caused a nuisance through other direct evidence, it will supplement its response to disclose that other direct evidence.

The State refers Simmons to documents included in the State's February 1, 3, and 8, 2007 document production and subsequent updates produced pursuant to the Court's January 5, 2007 Order. See attached index. The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075).

INTERROGATORY NO. 18: State completely and in detail the facts upon which you base the allegation contained in ¶ 94 of Your Amended Complaint that “[a]n imminent and substantial endangerment to health or the environmental may be presented and is in fact presented as a direct and proximate result of [Simmons’] respective contribution to the handling, storage, treatment, transportation or disposal of poultry waste in the IRW and lands and waters therein” and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 18:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, the State intends to demonstrate an imminent and substantial endangerment through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of Simmons wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2)

discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

- (A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the “pathway” to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;
- (B) Showing that a chemical “finger print” is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants’ waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;
- (C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;
- (D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;
- (E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. The State has produced documents addressed by the Court's January 5, 2007 Order associated with the State's sampling scheme and will continue these productions on a rolling basis. The State has not yet determined which witness or witnesses it will use to prove these facts. To the extent that the State will prove that Simmons has caused an imminent and substantial endangerment through other direct evidence, it will supplement its response to disclose that other direct evidence.

The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075).

The following list of documents is representative of documents responsive to this request:

Avery, L. M., Killham, K., and Jones, D. L. (2005), Survival of E. Coli O157:H7 in Organic Wastes Destined for Land Application. *Journal of Applied Microbiology* 98(4): 814-22. (see pages 814-815, 820-821).

Coyne, M. S. and Blevins, R. L. (1995), Fecal Bacteria in Surface Runoff from Poultry-Manured Fields. *Animal Waste and the Land-Water Interface*. Boca Raton, Lewis Publishers: 77-87. (see pages 77, 80, 82, 85-86).

Crane, S.R., Westerman, P.W., and Overcash, M. R. (1980), Dieoff of Fecal Indicator Organisms Following Land Application of Poultry Manure. *Journal of Environmental Quality*, 9: 531-537. (see pages 531, 537).

Davis, J. V. and Bell, R. W. (1998), Water-Quality Assessment of the Ozark Plateaus Study Unit, Arkansas, Kansas, Missouri, and Oklahoma; Nutrients, Bacteria, Organic Carbon, and Suspended Sediment in Surface Water, 1993-95. United States Geological Survey 98-4164. 63 p. (see pages 1, 5, 7, 10, 19, 37-38).

Davis, R. K., Hamilton, S., and Van Brahana, J. (2005), Escherichia Coli Survival in Mantled Karst Springs and Streams, Northwest Arkansas Ozarks, U.S.A. *Journal of the American Water Resources Association* 41(6): 1279-1287 (see pages 1279-1280, 1284-1286).

Mawdsley, J. L., Bardgett, R. D., Merry, R. J., Pain, B. F., and Theodorou, M. K. (1995), Pathogens in Livestock Waste, Their Potential for Movement through Soil and Environmental Pollution. *Applied Soil Ecology. A Section of Agriculture, Ecosystems & Environment* 2(1): 1-15. (see pages 1-12).

Schlottmann, A. L. 2000. Reconnaissance of the Hydrology, Water Quality, and Sources of Bacterial and Nutrient Contamination in the Ozark Plateaus Aquifer System and Cave Springs Branch of Honey Creek, Delaware County, Oklahoma, March 1999-March 2000. Water-Resources Investigations Report 00-4210, available at <http://pubs.usgs.gov/wri/wri004210/>

USGS Prepared in Cooperation with the Arkansas Soil and Water Conservation Commission – Phosphorus and Nitrogen Concentrations and Loads at Illinois River South of Siloam Springs, Arkansas, 1997 – 1999. OSRC 2-10.

USGS National Water-Quality Assessment Program – Water-Quality Assessment of the Ozark Plateaus Study Unit, Arkansas, Kansas, Missouri, and Oklahoma – Nutrients, Bacteria, Organic Carbon, and Suspended Sediment in Surface Water, 1993-95 OSRC 2-11

USGS Preliminary Analysis of Phosphorus Concentrations and Fecal-Indicator Bacteria Counts at Selected Sites in the Illinois River Basin in Oklahoma, 1997-2001. OSRC Log 2-13

Coordinated Watershed and Restoration Protection Strategy for Oklahoma's Impaired Scenic Rivers (Per SB 972) 2002, 2004-2006 Update located at <http://www.environment.ok.gov/>.

Oklahoma's Beneficial Use Monitoring Program – Final Report 1998 OSRC Log 2-15

Oklahoma's Beneficial Use Monitoring Program – 1999 Final Report OSRC Log 2-16

Oklahoma's Beneficial Use Monitoring Program raw data given at the OWRB document production and located in the sliding filing cabinets.

Nelson, M, Cash, W, Trost, K, Purtle, J. (2005) Illinois River 2004 Pollutant Loads at Arkansas Highway 59 Bridge. Arkansas Water Resources Center MSC-325.

Nelson, M, Cash, W, Trost, K, Purtle, J. (2006) Illinois River 2005 Pollutant Loads at Arkansas Highway 59 Bridge Arkansas Water Resources Center MSC-332.

Oklahoma Department of Environmental Quality (1998 -2004), Water Quality Assessment Integrated Reports. <http://www.deq.state.ok.us>

Public Water Supply reports located on the SDWIS (Public Water Supply Reports) database are too numerous to list herein, however, the State refers you to the indexes given to you at the Oklahoma Department of Environmental Quality which list all the public water supplies in the Illinois River watershed. Furthermore, if you simply choose one of the four counties in the watershed on the SDWIDS search page you can pull up all the public water supplies and see all their reporting and violation data.

USGS Surface Water Data for the Illinois River Basin, Water Quantity and Quality parameters located at: http://ar.water.usgs.gov/sun/data-bin/get_data?control=multiple&group_nm=illinois

OWRB Water Quality Data Viewer, all stations in the Illinois River Watershed, including Lake Tenkiller, located at: <http://www.owrb.ok.gov/maps/server/wims.php>

Oklahoma Water Resources Board, U.S. Army Corps of Engineers and Oklahoma State University. 1996. Diagnostic and Feasibility Study on Tenkiller Lake, Oklahoma. Sponsored by USEPA. Available at <http://www.owrb.ok.gov/studies/reports/reports.php>.

Phosphorus Concentrations, Loads and Yields in the Illinois River Basin, Arkansas and Oklahoma, 1997-2001, p. 1, (<http://pubs.usgs.gov/wri/wri034168/>).

Phosphorus Concentrations, Loads and Yields in the Illinois River Basin, Arkansas and Oklahoma, 2000-2004, (<http://pubs.usgs.gov/sir/2006/5175/>).

Food Protech, Bates Nos. STOK14522-14606, Box 7.

EML Data: 233292-259309, Bates Nos. STOK18541-18764.

EML Data: 225284-233290, Bates Nos. STOK18765-18984.

EML Data: 215478-225279, Bates Nos. STOK18985-19197.

EML Data: 153505-214398, Bates Nos. STOK19198-19414.

EML bacteria data (including chain of custody), Bates Nos. STOK24163-24218.

EML bacteria reports, Bates Nos. STOK24482-24493.

Bioseps, Bates Nos. STOK20402-20438.

BACTI Database produced from the Oklahoma Department of Environmental Quality on July 2, 2007, which contains bacteria data from the IRW by county.

INTERROGATORY NO. 19: State with particularity the factual and legal basis for the allegation contained in Count 4 and 5 of Your Amended Complaint that the conduct and acts of Simmons constitute a nuisance under Oklahoma law (including, but not limited to, an alleged violation of 27A Okla. Stat. § 2-6-105 or 2 Okla. Stat. § 2-18.1) and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 19:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, the State intends to demonstrate the conduct of Simmons constitute a nuisance under Oklahoma law (including, but not limited to, an alleged violation of 27A Okla. Stat. § 2-6-105 or 2 Okla. Stat. § 2-18.1) through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of Simmons wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes

into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

(A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the “pathway” to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;

(B) Showing that a chemical “finger print” is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants’ waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;

(C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;

(D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;

(E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. The State has produced documents addressed by the Court's January 5, 2007 Order associated with the State's sampling scheme and will continue these productions on a rolling basis. The expert opinions and reports that will show these violations are still being completed and will be provided to the Defendants in accordance with the Court's Scheduling Order (Dkt. #1075).

The State has not yet determined which witness or witnesses it will use to prove these facts. To the extent that the State will prove that Simmons has caused a nuisance through other direct evidence, it will supplement its response to disclose that other direct evidence.

The State refers Simmons to documents included in the State's February 1, 3, and 8, 2007 document production and subsequent updates produced pursuant to the Court's January 5, 2007 Order. See attached index. The State will supplement this Interrogatory as responsive

information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075).

INTERROGATORY NO. 20: State with particularity the factual and legal basis for the allegation contained in Count 6 of Your Amended Complaint that Simmons entity has committed trespass under applicable state law and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 20:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, the State intends to demonstrate that Simmons has committed Trespass through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of Simmons wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from

the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

- (A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the “pathway” to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;
- (B) Showing that a chemical “finger print” is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants’ waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;
- (C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;
- (D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;
- (E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. The State has produced documents addressed by the Court's January 5, 2007 Order associated with the State's sampling scheme and will continue these productions on a rolling basis.

The State has not yet determined which witness or witnesses it will use to prove these facts. To the extent that the State will prove that Simmons has caused a trespass through other direct evidence, it will supplement its response to disclose that other direct evidence.

The State refers Simmons to documents included in the State's February 1, 3, and 8, 2007 document production and subsequent updates produced pursuant to the Court's January 5, 2007 Order. See attached index. The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075).

INTERROGATORY NO. 21: State with particularity the factual and legal basis for the allegation contained in Count 8 of Your Amended Complaint that Simmons violated 2 Okla.

Stat. § 10-9.7 and Oklahoma Administrative Code § 35:17-5-5 and identify every witness upon whom You will rely to establish each fact.

RESPONSE TO INTERROGATORY NO. 21:

The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, the State intends to demonstrate that Simmons violated 2 Okla. Stat. § 10-9.7 and Oklahoma Administrative Code § 35:17-5-5 through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of Simmons wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

- (A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater.

Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the “pathway” to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;

(B) Showing that a chemical “finger print” is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants’ waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;

(C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;

(D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;

(E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. The State has produced documents addressed by the Court's January 5, 2007 Order associated with the State's sampling scheme and will continue these productions on a rolling basis.


The State has not yet determined which witness or witnesses it will use to prove these facts. To the extent that the State will prove that Simmons has caused violations through other direct evidence, it will supplement its response to disclose that other direct evidence.

The State refers Simmons to documents included in the State's February 1, 3, and 8, 2007 document production and subsequent updates produced pursuant to the Court's January 5, 2007 Order. See attached index. The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075).

VERIFICATION

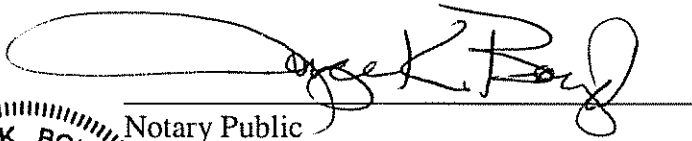
STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Miles Tolbert, being of legal age, hereby depose and state that I have read the foregoing responses to these interrogatory and that they are true and correct, to the best of my knowledge and belief, and that I furnish such supplemental responses based on consultation with the representatives of the State of Oklahoma based on documents identified as of the date of this response.



Miles Tolbert
Secretary of the Environment
State of Oklahoma

Signed and subscribed to before me on this 14th day of September, 2007



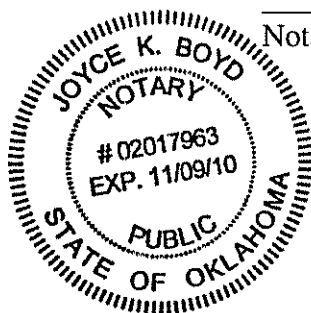
Notary Public

My Commission Expires:

11.9.10

My Commission Number:

02017963



REQUEST FOR PRODUCTION

Because many of Simmons' discovery requests repeat, duplicate, or overlap requests previously made by other Poultry Integrator Defendants, the State adopts and incorporates, as if fully set forth herein, its objections and responses to discovery requests heretofore made by other Poultry Integrator Defendants in this case.

Documents not subject to the previous objections have been provided for inspection on-site at the Oklahoma Department of Agriculture, Food, and Forestry, Oklahoma Water Resources Board, Oklahoma Department of Environmental Quality, Oklahoma Conservation Commission, Office of the Secretary of the Environment, and Oklahoma Scenic Rivers Commission. Documents from other state agencies, including but not limited to, the Oklahoma Oklahoma Department of Wildlife Conservation, the Oklahoma Corporation Commission, and the Oklahoma Department of Tourism and Recreation, have been previously provided and are currently being collected and will be produced to Defendants. Further, additional documents have been provided to Simmons in electronic format in the State's ESI production. Without waiving its objections, but hereby incorporating each of them by reference in the specific responses as if fully set forth therein, and subject thereto, the State further states and alleges as follows:

REQUEST FOR PRODUCTION NO. 1: Produce all documents identified or referenced in Your Answers to these Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its

counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had amply opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants. The State objects that this Request is duplicative of Requests for Production 34-53.

Subject to and without waiver of these objections, the State refers you to its Responses and Request for Productions 34-58 and corresponding Interrogatory Responses.

REQUEST FOR PRODUCTION NO. 2: Produce all documents relied upon by You to prepare or support Your Answers to these Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B).

The State objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State has identified documents in response to certain Interrogatories and will make further disclosures pursuant to the Court’s Scheduling Order (DKT #1075)

REQUEST FOR PRODUCTION NO. 3: Produce all documents provided by You to any Expert You expect to call as a witness in the trial of this Lawsuit.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State objects to this request to the extent that it seeks identification of “all” documents for

the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is a verbatim copy of Cargill Turkey, LLC’s Request for Production No. 3.

Subject to and without waiving the foregoing objections, the State will disclose this information pursuant to the Court’s Scheduling Order (Dkt# 1075).

REQUEST FOR PRODUCTION NO. 4: Produce all documents relating to the identification, determination, calculation and amount of damages You are seeking to recover in this Lawsuit.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is a verbatim copy of Cargill Turkey, LLC’s Request for Production No. 4.

Subject to and without waiver of these objections, the State will produce this information pursuant to the Court’s Scheduling Order (DKT#1075).

REQUEST FOR PRODUCTION NO. 5: Produce all documents that support your response to Interrogatory No. 1.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State did not identify any documents responsive to Interrogatory No. 1.

REQUEST FOR PRODUCTION NO. 6: Produce all documents (including GIS electronic files and displays, maps, photographs and aerial photographs) that depict any portion of the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is a verbatim copy of Cargill Turkey, LLC’s Request for Production No. 6.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 6.

REQUEST FOR PRODUCTION NO. 7: Produce all documents (including GIS electronic files and displays, maps, photographs, and aerial photographs) that depict any poultry operations within the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the

State objects that this request is duplicative and harassing as it is a verbatim copy of Cargill Turkey, LLC's Request for Production No. 7.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 7.

REQUEST FOR PRODUCTION NO. 8: Produce all documents (including GIS electronic files and displays, maps, photographs, and aerial photographs) that depict any potential source of the Pollutants or Contaminants alleged in Your Complaint, including any transport pathway between the source and the waters of the Illinois River Watershed (including, but not limited to the public water supplies, Scenic Rivers and their tributaries, Lake Tenkiller and its tributaries).

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B).

The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is a verbatim copy of Cargill Turkey, LLC’s Request for Production No. 8.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had amply opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 8

REQUEST FOR PRODUCTION NO. 9: Produce all documents relating to any poultry operation within the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B).

The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is a verbatim copy of Cargill Turkey, LLC’s Request for Production No. 9.

The State produced documents responsive to this request the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had amply opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 9.

REQUEST FOR PRODUCTION NO. 10: Produce all documents relating to any communications between you and Simmons.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible

to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 10.

Subject to and without waiving the foregoing objections, Simmons is in possession of its own communications with the State and the State has already produced communications with Simmons at agency document productions.

REQUEST FOR PRODUCTION NO. 11: Produce all documents relating to the operations of any Third Party Defendant in this Lawsuit.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 11.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production

is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 11.

REQUEST FOR PRODUCTION NO. 12: Produce all documents relating to any communications between You and any Federal Agency regarding either the Illinois River Watershed or any of Your allegations contained in the Second Amended Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 13.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site

document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 13.

REQUEST FOR PRODUCTION NO. 13: Produce all documents relating to any communications between You and any Agency, regulatory body, municipality, Public Trust or Authority, or any other governmental entity of any State regarding either the Illinois River Watershed or any of Your allegations contained in the First Amended Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 14.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation

Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 14.

REQUEST FOR PRODUCTION NO. 14: Produce all documents relating to the volume or number of poultry operations within the Illinois River Watershed since 1980 which you allege are associated with Simmons or for which you claim Simmons is legally responsible.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 15.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 15. **REQUEST FOR PRODUCTION NO. 15:** Produce all documents relating to the application or deposition of fertilizer or nutrients of any type on the surface of any lands located within the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the

State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC's Request for Production No. 16.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had amply opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 16.

REQUEST FOR PRODUCTION NO. 17: Produce all documents relating to any study, review, evaluation, investigation, sampling or analysis regarding poultry litter as a potential source of fecal coliform, E. Coli, and enterococci in the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of "all" documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible

to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 31.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had amply opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 31.

REQUEST FOR PRODUCTION NO. 18: Produce all documents relating to any study, review, evaluation, investigation, sampling or analysis of the streams or groundwater in the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for

the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 32.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had amply opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 32.

REQUEST FOR PRODUCTION NO. 19: Produce all documents relating to any study, review, evaluation, investigation, sampling or analysis of other sources of nitrogen/nitrogen compounds, phosphorus/phosphorus compounds, arsenic/arsenic compounds, zinc/zinc compounds, copper/copper compounds, hormones, and/or microbial pathogens in the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known

or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 33.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 33.

REQUEST FOR PRODUCTION NO. 20: Produce all health advisories or warnings posted in the Illinois River Watershed since 1952.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known

or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 36.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 36.

REQUEST FOR PRODUCTION NO. 21: Produce all documents related to Your contention that the actions or omissions of Simmons have adversely impacted the environment (including but not limited to, water quality, wildlife and biota) within the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work

product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 37.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 37.

REQUEST FOR PRODUCTION NO. 22: Produce all documents related to Your contention that the actions or omissions of the Defendants have resulted in eutrophication within the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 38.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 38.

REQUEST FOR PRODUCTION NO. 23: Produce all documents related to increased human health risk within the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 40.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 40.

REQUEST FOR PRODUCTION NO. 24: Produce all documents related to fish kills within the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 41.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, Oklahoma Department of Wildlife Conservation and the Oklahoma Department of Agriculture, Food, and Forestry document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had amply opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 41.

REQUEST FOR PRODUCTION NO. 25: Produce all documents related to studies,

evaluations, investigations, sampling or analysis conducted by Bert Fisher with regard to this lawsuit.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 43.

REQUEST FOR PRODUCTION NO. 26: Produce all documents relating to the levels or concentrations of Pollutants or Contaminants in the surface within the Illinois River Watershed since 1952.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the

State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC's Request for Production No. 45.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had amply opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 45.

REQUEST FOR PRODUCTION NO. 27: Produce all documents relating to the levels or concentrations of Pollutants or Contaminants in the soils within the Illinois River Watershed since 1952.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of "all" documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible

to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 46.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 46.

REQUEST FOR PRODUCTION NO. 28: Produce all documents relating to the levels or concentrations of Pollutants or Contaminants in the groundwater within the Illinois River Watershed since 1952.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for

the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 47.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 47.

REQUEST FOR PRODUCTION NO. 29: Produce all documents related to Your contention that the actions or omissions of the Defendants have affected recreational uses of the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO.29: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B).

The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 48.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, and the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Tourism document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 48.

REQUEST FOR PRODUCTION NO. 30: Produce all documents relation to complaints, citations, warnings, notices of violation or enforcement actions brought against any poultry operation in the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its

counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 48.

The State produced documents responsive to this request at the Oklahoma Department of Agriculture, Food, and Forestry document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had amply opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 49.

REQUEST FOR PRODUCTION NO. 31: Produce all Nutrient Management Plans and litter application records for all persons, entities and operations (including but not limited to poultry operations) in the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B).

The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 54.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had amply opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 54.

REQUEST FOR PRODUCTION NO. 32: Produce all documents related to costs allegedly incurred by Plaintiffs to monitor, assess and evaluate water quality, wildlife and biota within the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its

counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 55.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had amply opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 55. **REQUEST FOR PRODUCTION NO. 33:** Produce all documents supporting Your contention that hormones and/or hormonal supplements, including but not limited to estradiol, are provided to poultry grown in the Illinois River Watershed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known

or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request. Further, the State objects that this request is duplicative and harassing as it is substantially the same as Cargill Turkey, LLC’s Request for Production No. 56.

The State produced documents responsive to this request at the Oklahoma Department of Environmental Quality, the Oklahoma Water Resources Board, the Oklahoma Conservation Commission, Oklahoma Secretary of the Environment, the Oklahoma Scenic Rivers Commission, and the Oklahoma Department of Agriculture, Food, and Forestry on-site document productions. As such, requiring the State to reproduce its entire document production is unreasonably cumulative and duplicative. Simmons has had ample opportunity in this action to obtain the information sought as Simmons has been afforded the opportunity to review, inspect, and copy documents at all agency productions. Further, Simmons has asserted that it is participating in a joint defense of this action with the other defendants.

Subject to and without waiving the foregoing objections, the State refers Simmons to its Response and all relevancy log designations for Cargill Turkey, LLC, Request No. 56.

REQUEST FOR PRODUCTION NO. 34: Produce all documents that support your Response to Interrogatory No. 2.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known

or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.2.

REQUEST FOR PRODUCTION NO. 35: Produce all documents that support your Response to Interrogatory No. 3.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.3.

REQUEST FOR PRODUCTION NO. 36: Produce all documents that support your Response to Interrogatory No.4.

RESPONSE TO REQUEST FOR PRODUCTION NO. 36:

The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.4.

REQUEST FOR PRODUCTION NO. 37: Produce all documents that support your Response to Interrogatory No. 5.

RESPONSE TO REQUEST FOR PRODUCTION NO. 37:

The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.5.

REQUEST FOR PRODUCTION NO. 38: Produce all documents that support your Response to Interrogatory No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 38: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.6.

REQUEST FOR PRODUCTION NO. 39: Produce all documents that support your Response to Interrogatory No. 7.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.7.

REQUEST FOR PRODUCTION NO. 40: Produce all documents that support your Response to Interrogatory No. 8.

RESPONSE TO REQUEST FOR PRODUCTION NO. 40: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.8.

REQUEST FOR PRODUCTION NO. 41: Produce all documents that support your Response to Interrogatory No. 9.

RESPONSE TO REQUEST FOR PRODUCTION NO. 41: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for

the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.9.

REQUEST FOR PRODUCTION NO. 42: Produce all documents that support your Response to Interrogatory No. 10.

RESPONSE TO REQUEST FOR PRODUCTION NO. 42: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.10.

REQUEST FOR PRODUCTION NO. 43: Produce all documents that support your Response to Interrogatory No. 11.

RESPONSE TO REQUEST FOR PRODUCTION NO. 43: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B).

The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.11.

REQUEST FOR PRODUCTION NO. 44: Produce all documents that support your Response to Interrogatory No. 12.

RESPONSE TO REQUEST FOR PRODUCTION NO. 44: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.12.

REQUEST FOR PRODUCTION NO. 45: Produce all documents that support your Response to Interrogatory No. 13.

RESPONSE TO REQUEST FOR PRODUCTION NO. 45: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its

counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.13.

REQUEST FOR PRODUCTION NO. 46: Produce all documents that support your Response to Interrogatory No. 14.

RESPONSE TO REQUEST FOR PRODUCTION NO. 46: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.14.

REQUEST FOR PRODUCTION NO. 47: Produce all documents that support your Response to Interrogatory No. 15.

RESPONSE TO REQUEST FOR PRODUCTION NO. 47: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known

or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.15.

REQUEST FOR PRODUCTION NO. 48: Produce all documents that support your Response to Interrogatory No. 16.

RESPONSE TO REQUEST FOR PRODUCTION NO. 48: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.16.

REQUEST FOR PRODUCTION NO. 49: Produce all documents that support your Response to Interrogatory No. 17.

RESPONSE TO REQUEST FOR PRODUCTION NO. 49: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work

product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.17.

REQUEST FOR PRODUCTION NO. 50: Produce all documents that support your Response to Interrogatory No. 18.

RESPONSE TO REQUEST FOR PRODUCTION NO. 50: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.18.

REQUEST FOR PRODUCTION NO. 51: Produce all documents that support your Response to Interrogatory No. 19.

RESPONSE TO REQUEST FOR PRODUCTION NO. 51: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.19.

REQUEST FOR PRODUCTION NO. 52: Produce all documents that support your Response to Interrogatory No. 20.

RESPONSE TO REQUEST FOR PRODUCTION NO. 52: The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation of preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.20.

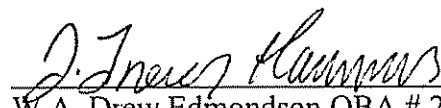
REQUEST FOR PRODUCTION NO. 53: Produce all documents that support your Response to Interrogatory No. 21.

RESPONSE TO REQUEST FOR PRODUCTION NO. 53:

The State objects to this request to the extent it seeks information protected by the attorney-client privilege or work product protection. The State objects to this request to the extent that it seeks information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The state objects to this request to the extent that it seeks identification of “all” documents for the request. As such, the request is overly broad and unduly burdensome. It may be impossible to locate “all” documents or each item or information responsive to the request.

Subject to and without waiving the foregoing objections, the State refers you to its response to Interrogatory No.21.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2007, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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